

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Robert G. Weldon,	:	C.A. No. 06-04-0021 MV
	:	
Appellant,	:	
	:	
vs.	:	
	:	
State of Delaware Division	:	
of Motor Vehicles,	:	
	:	
Appellee.	:	

Submitted: July 11, 2006

Decided: July 17, 2006

**On appeal from the Division of Motor Vehicles**

**Affirmed.**

**Charles E. Whitehurst, Jr., Esquire, 33 South State Street, Dover, Delaware 19901,  
Attorney for Appellant.**

**Frederick H. Schranck, Esquire, Department of Transportation, P.O. Box 778,  
Dover, Delaware 19903, Attorney for Appellee.**

**Trader, J.**

In this civil appeal from the Division of Motor Vehicles Department of Public Safety, I hold that Trooper Martin's brief detention of the appellant did not violate the Fourth Amendment. Accordingly, the decision of the Division revoking the appellant's driver's license is affirmed.

The relevant facts are as follows: On November 27, 2005, the appellant, Robert Weldon, was operating his motorcycle southbound on U.S. Route 13 north of Felton, Delaware. At the intersection of U.S. Route 13 southbound and State Route 15, the appellant turned left and entered the median strip crossover. At the same time and place, another vehicle traveling westbound on State Route 15 entered the median and the appellant swerved to avoid contact with the other vehicle and the left side of the motorcycle struck the ground.

The accident was called into the Kent Com Dispatch Center at 5:25 P.M. and Trooper Suroweic arrived at the scene of the accident at 5:28 P.M.. Trooper Martin, who is in field training, arrived at the scene of the accident just prior to the arrival of Trooper Suroweic. Trooper Martin detained the appellant and maintained the scene of the accident until the arrival of Trooper Suroweic. Trooper Suroweic investigated the accident and questioned the appellant. He smelled an odor of alcoholic beverage on the appellant's breath, conducted field sobriety tests on the appellant, and thereafter arrested him for driving under the influence.

At a hearing before the Division, the hearing officer found that there was probable cause to believe that the appellant was driving under the influence and he refused to take the chemical test. The hearing officer also found that the appellant was legally detained by Trooper Martin. Accordingly, the appellant's driver's license was

revoked for a period of twelve months. Thereafter, the appellant filed a timely appeal to this Court.

“The scope of review of an appeal from an administrative decision of the Division of Motor Vehicles is limited to correcting errors of law and determining whether substantial evidence of record exists to support the findings of fact and conclusions of law.” *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991). Findings of fact will not be overturned on an appeal as long as they are sufficiently supported by the record and the product of an orderly and logical deductive process. *Id.* If there is substantial evidence in the record, the court may not reweigh and substitute its own judgment for that of the agency. *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241 (Del. Super. 1976).

“[W]hen the facts have been established, the hearing officer’s evaluation of the legal significance may be scrutinized upon appeal.” *Voshell v. Attix*, 574 A.2d 264 (Del. Super. 1990). “The Division’s understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and probative value of real evidence.” *Id.*

The appellant does not challenge the hearing officer’s probable cause determination, and he does not challenge the evidence supporting the hearing officer’s determination that he refused to take a breathalyzer test. His challenge is limited to the time frame between his detention at the scene by the initial police officer and the eventual assumption of investigative responsibility by another police officer. He contends that that this brief detention violates the Fourth Amendment. I disagree.

In *United States v. Sharpe*, 470 U.S. 675 (1985), the United States Supreme Court held a twenty-minute detention of a suspect met Fourth Amendments standards of reasonableness. “[I]n determining whether the seizure and search were ‘unreasonable’ our inquiry is a dual one—whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry v. Ohio*, 392 U.S. 1, 19-20 (U.S. 1968). Trooper Martine would have a reasonable and articulable suspicion that the appellant committed the offense of careless driving. The defendant was standing in the crossover by the overturned motorcycle. The appellant, however, does not challenge the initial detention itself, but only the length of the detention. The brevity of an investigative detention is an important factor in determining whether the detention is unreasonable.

In *Sharpe, supra*, the state highway patrol and DEA agents were following two vehicles suspected of drug activity. The state highway patrolman stopped the pickup truck and detained the driver for about fifteen minutes until the arrival of the DEA agent. The DEA agent smelled marijuana on the truck and observed large numbers of burlap wrapped bales resembling bales of marijuana on the truck. He then arrested Savage on drug charges. The court held that the detention was not too long in duration and could be justified as an investigative detention.

In the case before me, the evidence reveals that Trooper Suroweic arrived three minutes after the reported time of the accident. At that time, “Martin was just holding the scene in general, just treating it as an accident at the time.” A -13. Therefore, Trooper Martin reached the scene a minute or two prior to the investigating officer.

The appellant argues that under *Sharpe*, this Court must examine whether the police diligently pursued a means of investigation that is likely to confirm or dispel their suspicions quickly during which time it was necessary to detain the appellant. Although this is a correct statement of law as applied to the facts of this case, I conclude that the police diligently pursued an investigation.

In the case before me, it was reasonable for Trooper Martin, a trooper in field training, to detain the appellant and preserve the scene of the accident for a brief period of time until the arrival of Trooper Suroweic. When Trooper Suroweic arrived, he questioned the operator concerning the circumstances surrounding the accident. A-3. He noted that there were scuff marks on the ground matching scuff marks on the defendant's motorcycle. A - 4. He also noted the roadway was dark, the surface of the road was dry, and the weather conditions were cloudy. A - 4. While speaking to the defendant, he detected a strong odor of alcoholic beverage on his breath. A - 5. It was established that the point of impact was ten feet east of the east edge of the roadway on U.S. Route 13 and fifteen feet north of the south edge of the roadway of the cutout. A - 4. Since the other unknown driver left the scene, it would be impossible to take a statement from him. The police officer continued the investigation of the accident by giving the appellant field sobriety tests and determining that he was under the influence of alcohol. It is a fair probability that the accident occurred because the appellant was under the influence of alcohol. A - 5 through A - 8. Under the above circumstances, I determine that the police investigation was diligent.

The Fourth Amendment is not a guarantee against all searches and seizures, but only against unreasonable searches and seizures. *Sharpe, supra*. I conclude that the

limited intrusion by Trooper Martin did not violate the Fourth Amendment. Since I find the decision of the hearing officer was free from legal error, the decision of the Division revoking the appellant's driver's license for a period of twelve months is affirmed.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**